REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION

GENERAL ASSEMBLY

OFFICIAL RECORDS: FORTY-FIFTH SESSION

SUPPLEMENT No. 33 (A/45/33)

UNITED NATIONS

best copy available

REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION

GENERAL ASSEMBLY

OFFICIAL RECORDS: FORTY-FIFTH SESSION

SUPPLEMENT No. 33 (A/45/33)

UNITED NATIONS

New York, 1990

NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

ISSN 0255—1276

READEX FICHE

[Original: Arabic/Chinese/English/
French/Russian/Spanish]

[8 March 1990]

CONTENTS

		Paragraphs	Page
I.	INTRODUCTION	1 - 10	1
II.	GENERAL DEBATE		
	Statement of the Rapporteur	11 - 17	4
III.	MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY		
	Statement of the Rapporteur	18 - 69	8
	A. Introduction of working papers A/AC.182/L.60/Rev.1 and A/AC.182/L.62/Rev.1 by their respective co-sponsors	21 - 25	15
	B. Joint discussion of the working papers	26 - 69	16
	1. Presentation of the clusters of the paragraphs of the two working papers	27 - 28	16
	2. Discussion of the clusters	29 - 69	17
IV.	PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES		
	Statement of the Rapporteur	70 - 82	35
	A. General exchange of views	70 - 77	35
	B. Examination of the report of the Secretary-General on the progress of work on the draft handbook on the peaceful settlement of disputes between States	78 - 82	36
V.	RATIONALIZATION OF EXISTING PROCEDURES OF THE UNITED NATIONS		
	Statement of the Rapporteur	83 - 86	38

I. INTRODUCTION

1. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization was convened in accordance with General Assembly resolution 44/37 of 4 December 1989 and met at United Nations Headquarters from 12 February to 2 March 1990. 1/

2. In accordance with General Assembly resolutions 3349 (XXIX) of 17 December 1974 and 3499 (XXX) of 15 December 1975, the Special Committee was composed of the following member States: Algeria, Argentina, Barbados, Belgium, Brazil, China, Colombia, Congo, Cyprus, Czechoslovakia, Ecuador, Egypt, El Salvador, Finland, France, German Democratic Republic, Germany, Federal Republic of, Ghana, Greece, Guyana, India, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Japan, Kenya, Liberia, Mexico, Nepal, New Zealand, Nigeria, Pakistan, Philippines, Poland, Romania, Rwanda, Sierra Leone, Spain, Tunisia, Turkey, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Yugoslavia and Zambia.

3. The session was opened by Mr. Carl-August Fleischhauer, Under-Secretary-General, the Legal Counsel, who represented the Secretary-General and made an introductory statement.

4. Mr. Vladimir S. Kotliar, Director of the Codification Division of the Office of Legal Affairs, acted as Secretary of the Special Committee and of its Working Group. Mr. Andronico O. Adede, Deputy Director for Research and Studies (Codification Division, Office of Legal Affairs), acted as Deputy Secretary of the Special Committee and of its Working Group. Mr. Manuel Rama-Montaldo, Senior Legal Officer, Ms. Christiane Bourloyannis and Mr. Francesco Presutti, Associate Legal Officers (Codification Division, Office of Legal Affairs), acted as assistant secretaries of the Special Committee and its Working Group.

5. At its 131st meeting, on 12 February 1990, the Special Committee, bearing in mind the terms of the agreement regarding the election of officers reached at its session in 1981, 2/ and taking into account the results of the pre-session consultations among its member States conducted by the Legal Counsel, elected the Bureau of the Special Committee, as follows:

Chairman:	Mr. Andreas Mavrommatis (Cyprus)
Vice Chairmen:	Mr. Ferid Belhaj (Tunisia)
	Mr. Boudewijn Dereymaeker (Belgium)
	Mr. Siegfried Hoppe (German Democratic Republic)
Rapporteur:	Mr. Norman M. Monagas (Venezuela)

6. The Bureau of the Special Committee also served as the Bureau of the Working Group.

7. At the same meeting, the Special Committee adopted the following agenda (A/AC.182/L.63):

1. Opening of the session.

2. Election of officers.

3. Adoption of the agenda.

4. Organization of work.

5. Consideration of the questions mentioned in General Assembly resolution 44/37 of 4 December 1989, in accordance with the mandate of the Special Committee as set out in that resolution.

6. Adoption of the report.

8. In accordance with paragraph 6 of General Assembly resolution 44/37, the Special Committee, having received requests for observer status from the permanent missions to the United Nations of Angola, Austria, Bulgaria, the Byelorussian Soviet Socialist Republic, Cameroon, Canada, Chile, Cuba, Guinea-Bissau, Hungary, Lebanon, the Libyan Arab Jamahiriya, Mongolia, Morocco, the Netherlands, Oman, Peru, Portugal, Senegal, Sweden, Thailand, the United Republic of Tanzania and the Ukrainian Soviet Socialist Republic, took note of those requests and accepted the participation of observers from those Member States.

9. Also at its 131st meeting, the Special Committee agreed on the following organization of work: one meeting would be devoted to a general debate in the plenary on all items concerning its mandate, as described in paragraphs 3 and 4 of General Assembly resolution 44/37, and one meeting would be devoted to examining the progress report of the Secretary-General on the elaboration of the draft handbook on the peaceful settlement of disputes between States. 3/ The Special Committee decided that its Working Group would devote 10 to 12 meetings to the question of the maintenance of international peace and security, four or five meetings to the question of the rationalization of procedures of the United Nations and two or three meetings to the question of the peaceful settlement of disputes between States; two to six meetings were reserved. It was understood that this distribution of meetings would be applied with the necessary degree of flexibility, taking account of the progress achieved in the consideration of the items.

10. As to the question of the maintenance of international peace and security, the Special Committee had before it document A/AC.182/L.60/Rev.1, entitled "Fact-finding by the United Nations to assist in the maintenance of international peace and security", submitted by Belgium, the Federal Republic of Germany, Italy, Japan, New Zealand and Spain; document A/AC.182/L.62/Rev.1, entitled "Fact-finding activities by the United Nations in the context of the maintenance of international peace and security", submitted by Czechoslovakia and the German Democratic Republic; and document A/AC.182/L.66, entitled "Fact-finding by the United Nations in the field of the maintenance of international peace and security", submitted by Belgium, Czechoslovakia, the German Democratic Republic, Germany, Federal Republic of, Italy, Japan, New Zealand and Spain. On the question of the rationalization of the procedures of the United Nations, the Special Committee had before it document A/AC.182/L.43/Rev.5, submitted by France and the United Kingdom and entitled "Rationalization of existing United Nations procedures"; the proposal submitted by the Union of Soviet Socialist Republics, as set out in paragraph 101 of the report of the Special Committee at its 1989 session; 4/ and document A/AC.182/L.67, submitted by the Chairman. The Special Committee also had before it the progress

report of the Secretary-General on the preparation of a draft handbook on the peaceful settlement of disputes between States (A/AC.182/L.64); it had before it as well document A/AC.182/L.65, entitled "New issues for consideration in the Special Committee", submitted by the Union of Soviet Socialist Republics.

II. GENERAL DEBATE

Statement of the Rapporteur

11. According to the decision taken at its 131st meeting on the organization of its work, the Special Committee held a general debate on 12 and 16 February 1990.

12. One of the representatives taking part in the general debate expressed satisfaction with the work of the Committee at its 1989 session and noted particularly the adoption by the Committee of the document on the resort to a commission of good offices, mediation or conciliation within the United Nations. He also reaffirmed the support of his delegation for the work on the drafting of the handbook on peaceful settlement of disputes between States currently being carried out by the Secretariat. The representative also observed that, in order to contribute to the maintenance of international peace and security, it was necessary to enhance the role of the Organization by adopting measures to enable it to achieve its fundamental objectives. He referred to the annual report of the Secretary-General to the General Assembly at its the forty-fourth session, 5/ which offered useful guidance in this respect. Referring to the two revised working papers on fact-finding were before the Special Committee, the representative expressed the view that the work of the Special Committee based on them during the current year, the first year of the United Nations Decade of International Law, would contribute to the primacy of international law and enhance the effectiveness of the Organization in dealing with the questions of maintenance of international peace and security. With respect to the revised working paper on the rationalization of existing procedures of the United Nations and the future work of the Committee, the representative was confident that the spirit of co-operation would continue to prevail in the Special Committee and that a general agreement could be reached in finding ways and means of enhancing the role of the Organization.

13. Another representative taking part in the general debate observed that the 1990 session of the Special Committee was taking place against the background of a further improvement in the international climate, which was characterized by international co-operation, particularly in the solution of global problems. The representative noted that there was a general agreement on the need to enhance the role of the Organization and that the Special Committee had an important role to play in this respect, as already demonstrated by the tangible results of its recent work. In this context, the representative pointed out that the work on fact-finding by the United Nations, which was currently being undertaken by the Special Committee, was yet another example of efforts towards strengthening the role of the Organization in the maintenance of international peace and security and considered fact-finding as part of the peace-keeping and peace-making roles of the Organization. It was his view that the development of fact-finding capabilities of the Organization should be based on the Charter of the United Nations, taking into account practical experience encompassing the functions of all principal organs of the United Nations, with due attention being paid to the increasing role of the Secretary-General.

14. Another representative taking part in the general debate outlined his delegation's views concerning various practical ways of enhancing the effectiveness of the United Nations and later presented a working paper (A/AC.182/L.65), the text of which is set out below for future consideration.

"NEW ISSUES FOR CONSIDERATION IN THE SPECIAL COMMITTEE

"Working paper submitted by the Union of Soviet Socialist Republics

"1. The exchange of views between members of the Special Committee in 1989 revealed a positive response to the proposals which may become topics for discussion at a later stage of the Committee's work.

"(a) Ways of expanding co-operation between the United Nations and regional organizations. As we understand it, this may involve enhancing the role of regional organizations in the efforts to create a healthier political climate in various parts of the world, eliminate existing hotbeds of tension and conflict, prevent the emergence of new ones, and resolve global problems, as well as fostering the co-operation of regional organizations with the United Nations and above all with its Security Council. Other proposals that may also deserve consideration have to do with developing mechanisms and safeguards of regional security. In our view, the permanent members of the Security Council could act as guarantors in this respect, committing themselves never to use force or the threat of force, to renounce such practices as demonstrative military presence and supplying arms to conflicting parties, it being generally agreed that these practices are among the factors which serve to aggravate regional conflicts.

"(b) Broadening the peace-making efforts of the Secretary-General of the United Nations. The following recommendations regarding the activities of the Secretary-General can be considered in this context:

"(i) Submitting information to the Security Council on a regular basis, including information of a confidential nature, about developments in any area of conflict or about other matters that might be of interest to the Council;

"(ii) Submitting on his own initiative reports for consideration by the Security Council on individual issues relating to the maintenance of international peace and security, including disarmament;

"(iii) More frequent exercise of the Secretary-General's right under Article 99 of the Charter of the United Nations to bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security;

"(iv) Making it a regular practice for the General Assembly to consider thoroughly the Secretary-General's annual reports on the work of the Organization and to take action, if need be, on the conclusions and recommendations contained therein;

"The Secretary-General's proposal on the establishment under United Nations auspices of a multilateral centre for reducing the risk of war could also be examined in this context.

"We believe that formalizing these understandings in a separate General Assembly resolution or in a more general document would contribute to the enhancement of the Secretary-General's role in maintaining international peace and security.

"2. Along with the proposals listed above, the following ideas may also be of interest.

"(a) We proceed from the assumption that the Special Committee could in principle undertake the task of elaborating a draft general instrument on peaceful settlement of disputes, although a special preparatory body could certainly be established for the purpose. The Special Committee might also join in elaborating a wide-ranging, long-term programme on the development of international law within the framework of the United Nations Decade of International Law proclaimed by the General Assembly for the 1990s.

"(b) There could be practical value in considering in the Special Committee the question of the ways and means of implementing the Charter of the United Nations and the norms of international law as well as related enforcement actions vis-à-vis a State that has breached the peace or failed to comply with Security Council decisions. Consideration of this matter would be especially appropriate in connection with the proclamation of the 1990s as the United Nations Decade of International Law. In this context, consideration should obviously be given to the question of the specific measures that might be taken with a view to implementing the numerous positive decisions adopted by the United Nations, and above all by the Security Council, to establish a stable legal order.

"(c) Another question that is highly relevant today and could be considered in the Special Committee has to do with provisional measures which the Security Council may take in accordance with Article 40 of the Charter of the United Nations in order to prevent an aggravation of the situation and to resolve dangerous crises and regional conflicts.

"(d) We are encouraged by the positive attitude towards the Soviet proposals for strengthening the preventive functions of the United Nations, as well as the desire for the Special Committee to explore the question of broadening the sphere of application of preventive United Nations activities. In our view, this could include the prevention of the potentially explosive situations that are caused by internal socio-economic and other factors; the Secretary-General's enhanced ability to perform information, consultative and mediatory functions in order to avert the threat of war on a global or regional scale; the formation under United Nations auspices of an extensive network for monitoring, collecting and processing information on the situation in areas of conflict; and so forth.

"(e) We are also interested in the idea that the Special Committee might consider measures aimed at strengthening the collective security régime provided for in the Charter of the United Nations.

"(f) The proposal that the question of the effectiveness of the United Nations system as a whole be studied also deserves consideration."

15. In presenting the above document, the representative pointed out that it had been based on consultations held by his delegation in order to develop new ideas for consideration by the Special Committee. He emphasized that the basic objective of the working paper was to make use of the potential of the Special Committee for the progressive development of international law and hoped that the working paper

would generate other proposals from Member States in addition to those contained in his delegation's document.

16. Although the working paper was not considered during the session, two delegations welcomed it and expressed support for the ideas contained therein. One of them regarded the working paper as a concrete contribution towards exploring ways and means of enhancing the role of the United Nations.

17. At the end of the session, all the participants expressed their deep gratitude and appreciation to the Chairman of the Special Committee, His Excellency Ambassador Andreas Mavrommatis, for his excellent guidance, dedication and outstanding contribution, with the efficient help of the members of the Bureau and the Secretariat, to the successful outcome of the work.

III. MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY

Statement of the Rapporteur

18. In accordance with the decision of the Special Committee reflected in paragraph 9 of document A/AC.182/1990/CRP.3, the Working Group considered the question of the maintenance of international peace and security at its 1st to 8th, 11th and 12th meetings, between 12 and 15 February and on 20 and 27 February 1990.

19. The Working Group had before it a revised version of a working paper (A/AC.182/L.60/Rev.1) submitted by Belgium, the Federal Republic of Germany, Italy, Japan, New Zealand and Spain at the 1989 session of the Special Committee, which read as follows:

"Fact-finding by the United Nations to assist in the maintenance of international peace and security

"I

"1. In performing its functions for the maintenance of international peace and security, the United Nations should have full knowledge of all relevant facts. To this end it should consider undertaking fact-finding activities. For the purpose of the present paper, fact-finding means any activity designed to ascertain facts necessary for the making of decisions by the competent United Nations organs in the field of the maintenance of international peace and security.

"2. As soon as a potentially dangerous situation is identified, the United Nations should consider sending a fact-finding mission to the relevant areas, unless all the facts can be obtained through the use of the existing information-gathering capabilities of the Secretary-General.

"II

"3. Fact-finding missions may be undertaken to gain an impartial and detailed knowledge of the facts. In deciding if and when a fact-finding mission should be undertaken, the competent United Nations organ should also keep in mind that the fact-finding mission can signal the concern of the United Nations as a whole and serve as a means for building confidence. Precautions should be taken so that the fact-finding mission results rather in defusing than in aggravating the situation.

"4. In accordance with the Charter of the United Nations, fact-finding missions may be undertaken, in the context of their different roles in maintaining international peace and security, by the Security Council, the General Assembly and the Secretary-General.

"5. The Secretary-General should consider undertaking fact-finding missions in areas where in his opinion a dangerous situation may arise or exists. He may, where appropriate, bring the information obtained to the attention of the Security Council.

"6. Any State should consider bringing any situation potentially dangerous to the maintenance of international peace and security, where the facts are disputed, to the attention of a competent organ of the United Nations, which should consider effective ways to ascertain such facts.

"7. Any request for the sending of a United Nations fact-finding mission by a State concerned to its territory, should be given expeditious consideration.

"8. In deciding to whom to entrust the conduct of a fact-finding mission, the Security Council and the General Assembly should give preference, in general, to the Secretary-General.

"9. The Secretary-General should be encouraged to prepare and update lists of experts in certain technical fields so as to have them available at any time for fact-finding missions.

"10. Once the decision has been made to undertake a fact-finding mission, the mission should be dispatched without delay.

"11. Fact-finding missions should be given clear terms of reference by the sending United Nations organ. Upon completion of its task, each United Nations fact-finding mission shall render such reports as may be determined by the sending United Nations organ.

"12. Fact-finding missions should perform their task in an impartial way. Their members shall not seek or receive instructions from any Government or from any other authority external to the United Nations.

"13. States should follow a policy of not refusing to admit United Nations fact-finding missions to their territory. 1/

"14. The sending United Nations organ is encouraged to make it known to the receiving State that it shall presume the latter's consent to admit the mission if no reply is received within a given short time.

"15. In the event a State refuses to admit a United Nations fact-finding mission to its territory, it should inform the sending United Nations organ without delay, indicating also the reasons for its refusal. It should keep the possibility of admitting the fact-finding mission under active review.

"16. States may at any time declare that they commit themselves to admit to their territory any United Nations fact-finding mission dispatched to assist in the maintenance of international peace and security. Such States shall be given an opportunity to voice their views to the sending United Nations organ.

"1/ To be read in the light of the following suggested preambular paragraph: 'Recognizing that, without prejudice to the obligation of Member States under Article 25 of the Charter, the sending of a United Nations fact-finding mission to the territory of any State requires that State's consent'.

"17. These general unilateral declarations may also be made only for certain types of fact-finding missions or for a certain time. The Secretary-General shall give adequate publicity to such declarations.

"18. All States should co-operate with, and give full and prompt assistance to, United Nations fact-finding missions in all aspects of their activities.

"19. Fact-finding missions should be granted all freedoms and facilities needed for fulfilling their task. In particular:

"(a) They should promptly be admitted in the areas to which they have been dispatched;

"(b) They should have freedom of movement and, in accordance with national law, full access to such places and information as they consider relevant for the performance of their task;

"(c) They should be entitled to perform their tasks without any pressure or interference;

"(d) They should have the right to work in full confidentiality;

"(e) They should have the right to communicate freely with all persons they consider relevant for the performance of their task, with full guarantee that no harmful consequence will be incurred by these persons;

"(f) They should enjoy full freedom of communication, in particular with the United Nations and among themselves, without censorship or delay;

"(g) Their members should enjoy the privileges and immunities specified in the Convention on the Privileges and Immunities of the United Nations.

"III

"20. The Secretary-General should survey the world-wide state of international peace and security regularly and systematically to facilitate the prevention or removal by the United Nations of threats to international peace and security. Where appropriate, he should bring relevant information to the attention of the Security Council.

"21. To this end he should make full use of the information-gathering capabilities of the Secretariat. Its capacity to provide early warning should be enhanced.

"22. The Secretary-General should continue to strengthen the Secretariat's information-gathering capabilities. This may include, when necessary, the use of United Nations information centres to collect publicly available information related to international peace and security.

"23. The Secretary-General should encourage United Nations representatives outside Headquarters to bring to his early attention, whenever urgent, any situation which may threaten international peace and security."

20. The Working Group had also before it a revised version of a working paper (A/AC.182/L.62/Rev.1) submitted by Czechoslovakia and the German Democratic Republic at the 1989 session of the Special Committee, which read as follows:

"Fact-finding activities by the United Nations in the context of the maintenance of international peace and security

"I

"1. In order to contribute to the further strengthening of the role of the United Nations in the maintenance of international peace and security, in particular in the prevention and peaceful settlement of disputes or situations which may threaten international peace and security, the fact-finding capabilities of the Organization should be fully used and further developed.

"2. United Nations fact-finding activities should be carried out with the objective of providing full knowledge of all relevant facts needed by the competent United Nations organs, thus enabling them to exercise effectively their functions in the prevention and peaceful settlement of disputes or situations. They should be based on a comprehensive exploration and on an objective and impartial evaluation of all available information.

"3. Fact-finding activities may be undertaken, within the scope of their competences:

"(a) By the Security Council in respect of matters related to Chapter VII of the Charter of the United Nations, or by the Secretary-General upon the request of the Security Council acting under Chapter VII of the Charter;

"(b) By the Security Council, the General Assembly or by the Secretary-General on his own behalf or upon the request of the Security Council or the General Assembly, in respect of matters concerning the maintenance of international peace and security other than those related to Chapter VII of the Charter.

"4. In considering the possibility to undertake fact-finding activities, the General Assembly as well as the Secretary-General will assure themselves that the Security Council is not exercising, in respect of the same dispute or situation, the functions assigned to it in the Charter, including the fact-finding activities.

"5. In undertaking fact-finding activities, in particular the following possibilities should be considered:

"(a) The sending of the Secretary-General or the assignment of another special representative;

"(b) The sending of a fact-finding mission of qualified experts to the area concerned;

"(c) The appointment of an ad hoc subsidiary body of the Security Council or the General Assembly for carrying out fact-finding activities primarily at Headquarters of the United Nations.

"6. Without prejudice to the relevant international obligations of States, in particular to those deriving from Article 25 of the Charter, the sending of a special representative or fact-finding mission to the territory of any State requires the prior consent of such State. Any request for the consent of a State to receive such a representative or fact-finding mission within its territory should be given timely consideration.

"7. The decision to use fact-finding capabilities, including the sending of a special representative or fact-finding mission, should indicate his or its mandate, as well as the character of the report to be presented to the sending organ upon completion of the mission.

"8. States should co-operate with and give all necessary assistance to the special representative or fact-finding mission. They shall not impede the full and independent performance of the fact-finding activities or interfere with the work of the representative or mission.

"8. bis States shall guarantee to the special representative or fact-finding mission, in particular:

"(a) Free movement in their territory and access to the places and information needed for the full implementation of the given mandate;

"(b) The right to work in full confidentiality;

"(c) The enjoyment of the privileges and immunities enshrined in the Convention on the Privileges and Immunities of the United Nations.

"9. The special representative as well as members of the fact-finding mission shall act in strict conformity with their mandate and, without prejudice to their privileges and immunities, shall respect the laws and regulations of the State in the territory of which they exercise their functions. They also shall not interfere with the internal matters of receiving States.

"9. bis All persons taking part in the performance of the fact-finding activities shall fulfil their task impartially and shall not receive any instruction from any authority other than the appointing organ.

"10. States directly concerned by the report presented as a result of the fact-finding by the special representative or by the fact-finding mission should be given an opportunity, whenever appropriate, to let the appointing organ know about their position in respect of the facts reflected in the report.

"11. Whenever fact-finding includes hearings or other similar procedures, the commission or other respective body shall adopt the rules of procedure and shall arrange all the formalities required for dealing with the evidence. The rules of procedure should include, in particular, the following principles:

"(a) On the inquiry both sides have the right to be heard;

"(b) The commission is entitled to ask from either party for such explanations and information as it considers necessary;

"(c) The witnesses and experts are summoned on the request of the parties or by the commission of its own motion;

"(d) The examination of witnesses is conducted by the President;

"(e) A minute of the evidence of the witness is drawn up forthwith and signed by the witness;

"(f) The report of the commission is limited to a statement of facts, and has in no way the character of an award. It is signed by all members of the commission.

"II

"12. The Security Council should consider the possibility to undertake fact-finding activities, inter alia, to obtain objective knowledge of the facts needed for:

"(a) The consideration of recommendations or decisions concerning the prevention or solution of disputes and situations which may threaten international peace and security;

"(b) The determination, in accordance with Article 34 of the Charter, whether the continuation of a dispute or situation is likely to endanger the maintenance of international peace and security;

"(c) The determination, in accordance with Article 39 of the Charter, of the existence of any threat to the peace, breach of the peace or act of aggression;

"(d) The consideration of alleged non-compliance with conditions set up in its decisions mentioned in subparagraph (a).

"13. [Deleted]

"14. The Security Council should, wherever appropriate and without prejudice to Article 36 of the Charter, consider the possibility to provide in its resolutions relevant to the maintenance of international peace and security for fact-finding, as a means of facilitating the solution of disputes or situations, as well as the exercise of its specific functions in the field of the maintenance of international peace and security.

"15. The General Assembly should consider the possibility to undertake fact-finding activities, in particular, to obtain objective knowledge of the facts needed for the consideration of recommendations concerning the prevention or solution of disputes and situations which may threaten international peace and security, in accordance with Articles 11 and 14 and subject to Article 12 of the Charter.

"15. bis The General Assembly should, wherever appropriate, consider the possibility to provide in its resolutions relevant to the maintenance of international peace and security for fact-finding as a means of facilitating the solution of disputes or situations brought to its attention.

"16. The Secretary-General should, wherever appropriate, consider the possibility to undertake fact-finding activities in order to obtain objective knowledge of the facts needed for implementation of his functions provided for in Article 99 of the Charter.

"16. bis The Secretary-General should respond promptly to any request by the Security Council or the General Assembly to carry out fact-finding activities, either himself or through a special representative or a fact-finding mission.

"16. ter The Secretary-General should pay special attention to the promotion of the use of the United Nations fact-finding capabilities at as early a stage as possible, in order to contribute to the prevention of disputes and situations likely to endanger the maintenance of international peace and security. Any proposal of the Secretary-General in this respect, if submitted to the Security Council or to the General Assembly, should be given timely consideration.

"17. The Secretary-General, if requested by the States parties to a dispute, should consider the sending of a special representative or of a fact-finding mission to the area concerned.

"17. bis The Secretary-General should also consider, from his own initiative or at the request of any State party to a treaty on the settlement of a dispute or situation likely to endanger international peace and security, the sending of a special representative or of a fact-finding mission for the purpose of investigation of any alleged violation of the provisions of such a treaty, if so stipulated in it.

"18. The Secretary-General should maintain and develop technical capabilities of the United Nations, including all necessary arrangements for the event of an emergency fact-finding mission. To that end, he should prepare and update a list of experts in various fields available to take part in fact-finding activities.

"19. Without prejudice to their right to resort to peaceful means of settlement of disputes of their own choice, States should be encouraged to include the provisions on the use of the United Nations fact-finding capabilities in their respective agreements, whenever such a procedure might contribute to the prevention or settlement of disputes or situations which may threaten international peace and security.

"III

"20. The sending of a United Nations fact-finding mission shall be without prejudice to the use by the States concerned of inquiry or other similar procedure resulting from the treaty on settlement of disputes concluded between the above-mentioned States.

"21. Nothing in the present draft shall be construed as prejudicing in any manner the provisions of the Charter, including those contained in Article 2, paragraph 7, thereof, or the rights and duties of States, or the scope of the functions and powers of the United Nations organs under the Charter."

A. Introduction of working papers A/AC.182/L.60/Rev.1 and A/AC.182/L.62/Rev.1 by their respective co-sponsors

21. In introducing working paper A/AC.182/L.60/Rev.1, one of the co-sponsors pointed out that the revised working paper took into account comments and suggestions that had been made during the discussion of its first version. He noted that, while all paragraphs in the revised document had been modified, except for paragraph 10, the basic structure and approach of the working paper remained unchanged. He reiterated the underlying assumptions of the working paper, as follows: first, the paper outlined policy suggestions without restating the law; secondly, it drew a distinction between the decision to send a fact-finding mission ("undertaking") and the actual conduct of the fact-finding mission ("carrying out"); and thirdly, the working paper drew a further distinction between a fact-finding mission as provided in part II of the document and information-gathering capabilities dealt with in part III of the document.

22. Further to the above general comments, the co-sponsor explained more specifically the changes reflected in the revised document by noting the following major points. Paragraph 1 in its new version contained a definition of fact-finding and addressed the question of the scope of the working paper. Paragraph 2 reflected the distinction between a fact-finding mission and information-gathering capabilities. The new draft of paragraph 3 elaborated the aims and purposes of fact-finding missions. Paragraphs 4 to 9, 11 and 12 incorporated certain editorial changes and were presented in a different order. Paragraphs 13 to 17, which were to be read in conjunction with the preambular paragraph proposed in footnote 1 dealing with the important question of the admittance of fact-finding missions, had been completely redrafted. Paragraph 13 was the corner-stone of this group of paragraphs and stated the general policy recommendation on this question, further elaborated in the other paragraphs of the group. The co-sponsor further pointed out that, on the question of fact-finding missions, the legal prerequisite of consent of States would be better placed in a preamble, since the basic approach of the working paper was to outline only policy recommendations and not to restate legal principles. Thus, paragraph 18 stated the policy recommendation relating to the obligations of States to co-operate with the fact-finding missions, while paragraph 19 outlined specific freedoms and facilities to enable fact-finding missions to fulfil their tasks. Paragraphs 20, 22 and 23, on information-gathering capabilities, had been redrafted and improved, while paragraph 21 contained a new provision.

23. Another co-sponsor of working paper A/AC.182/L.60/Rev.1 pointed out that the term "fact-finding" had been more accurately translated from the original English into French by the phrase "établissement des faits" instead of "enquête".

24. In introducing document A/AC.182/L.62/Rev.1, one of the co-sponsors similarly emphasized that the revised document took into account comments and suggestions made in the course of the debate on its earlier version. He pointed out that the order of the paragraphs had been kept while new paragraphs had been added in proper sequence.

25. As to specific changes reflected in that working paper, the following major points were made by the co-sponsors. In paragraph 1, the phrase "disputes or situations which may threaten international peace and security" had been spelt out in full where it appeared for the first time in the working paper and in most subsequent cases, reference was made only to "disputes or situations". Paragraph 2

had been simplified and designed to set out the objective of fact-finding, which could also serve as a definition. The wording of paragraph 4 had been brought closer to the language of the Charter of the United Nations on the question of the competence of principal organs of the United Nations in the area of the maintenance of international peace and security. In paragraph 5, in addition to drafting changes, the order of the possibilities for the undertaking of fact-finding missions had been changed in order to mention the Secretary-General first, thereby indicating a preference. Paragraph 6 on the consent of States to fact-finding missions had been redrafted to mention relevant international obligations of States, in particular those derived from Article 25 of the Charter. Paragraph 8 had been redrafted to state positively the obligation of co-operation further elaborated in paragraph 8 bis. Paragraph 9 on obligations of fact-finding missions had been made more balanced by including the requirement of observance of the law of the receiving State. Paragraph 9 bis had been added to refer to the obligations of individual members of the fact-finding mission. Paragraph 10 reflected the change concerning the report of the fact-finding missions by providing that the facts reflected in the report might be made known to the States concerned, where appropriate, while the report as a whole might not necessarily be. Paragraph 11 had been completely redrafted to include basic principles of rules of procedure of fact-finding missions instead of reference to those contained in the 1907 Hague Convention for the Pacific Settlement of International Disputes. Paragraph 12 had been restructured so as to avoid what was seen as an artificial distinction between the prevention and the solution of disputes. Paragraph 14 dealt with the Security Council alone, thus reserving the description of the role of the General Assembly to paragraph 15 and paragraph 15 bis. The role of the Secretary-General had been further elaborated in paragraphs 16 to 18, including the role assigned to him in a treaty concerning the settlement of a dispute or situation (para. 17 bis), relying upon the Geneva Agreements on the settlement of the Afghanistan question as a case in point. Paragraph 19 had been redrafted to reflect the idea of encouraging the recourse by States to the fact-finding of the United Nations.

B. Joint discussion of the working papers

26. The Working Group decided to discuss jointly working papers A/AC.182/L.60/Rev.1 and A/AC.182/L.62/Rev.1., which the co-sponsors had divided into eight clusters of paragraphs from each working paper, addressing the specific issues identified below.

1. Presentation of the clusters of the paragraphs of the two working papers

27. Thus, as presented by the co-sponsors of the two working papers, cluster 1 dealt with the introduction and definition and comprised paragraphs 1 and 2 of A/AC.182/L.60//Rev.1 and paragraphs 1 and 2 of A/AC.182/L.62/Rev.1. Cluster 2 dealt with the starting of a fact-finding mission and was made up of paragraphs 3, 4, 6, 7, 8, 10 and 11 of L.60/Rev.1 and paragraphs 3, 4, 5 and 7 of L.62/Rev.1. Cluster 3, which dealt with the Secretary-General, was divided into two sub-clusters: sub-cluster 3 (a) dealing with the undertaking of a fact-finding mission comprised paragraph 5 of L.60/Rev.1 and paragraphs 16, 17 and 17 bis of L.62/Rev.1; sub-cluster 3 (b) on the carrying out of a fact-finding mission by the Secretary-General comprised paragraph 9 of L.60/Rev.1 and paragraphs 16 bis, 16 ter and 18 of L.62/Rev.1. Cluster 4 on the question of consent and that of a general unilateral declaration contained footnote 1 and paragraphs 13 to 17 of L.60/Rev.1

and paragraphs 6 and 19 of L.62/Rev.1. Cluster 5 on the co-operation of States with fact-finding missions was also divided into two sub-clusters: sub-cluster 5 (a) dealt with the obligations of a receiving State and comprised paragraphs 18 and 19 of L.60/Rev.1 and paragraphs 8 and 8 bis of L.62/Rev.1; sub-cluster 5 (b) dealt with the obligations of missions and comprised paragraphs 12 and 16 (second sentence) of L.60/Rev.1 and paragraphs 9 to 11 of L.62/Rev.1. Cluster 6 on information-gathering was made up of paragraphs 20 to 23 of L.60/Rev.1. Cluster 7, which dealt with savings clauses, comprised paragraphs 20 and 21 of L.62/Rev.1. Cluster 8 dealing with the Security Council and the General Assembly was made up of paragraphs 12 and 14 and 15 bis of L.62/Rev.1.

28. The joint discussion of the two working papers in accordance with the above clusters was based on document A/AC.182/1990/CRP.1, which reproduced the texts of the specific paragraphs of the clusters side by side to facilitate their consideration with a view to producing a unified document.

2. Discussion of the clusters

29. In introducing the paragraphs of cluster 1 of working paper A/AC.182/L.60/Rev.1, one of the co-sponsors re-emphasized that paragraph 1 contained a definition of fact-finding for the purposes of the working paper, which had a bearing on the scope of the paper as a whole and stressed the basic premise of the document expressed in the first sentence of the paragraph. Paragraph 2 had been included in the working paper to differentiate between the sending of a fact-finding mission and information gathering. Information gathering, unlike the sending of a fact-finding mission, was an activity undertaken independently of the existence of a particular situation or dispute. Thus, paragraph 2 expanded the scope of the paper to include what was dealt with in paragraphs 20 to 23.

30. In introducing the paragraphs of cluster 1 from working paper A/AC.182/L.62/Rev.1, one of the co-sponsors of that working paper drew the attention of the Working Group to the fact that paragraph 1 was intended to establish the link between the general mandate of the Special Committee with respect to the question of maintenance of international peace and security and the specific proposals on the question of fact-finding by the United Nations. In this context, he added that the prevention and peaceful settlement of disputes referred to in the paragraph was an important element of the maintenance of international peace and security. The co-sponsors noted that paragraph 2 attempted to address the objectives of fact-finding and thereby provided a kind of definition. He shared the view that such a definition had a direct bearing on the scope of the document.

31. Following the introduction of each cluster by the co-sponsors, the Working Group proceeded first with general comments and then specific comments or observations on the individual paragraphs of the cluster.

32. In their general comments on the paragraphs of cluster 1, several delegations pointed out that the two working papers differed in scope: working paper A/AC.182/L.60/Rev.1 referred only to the maintenance of international peace and security, while working paper A/AC.182/L.62/Rev.1 referred to the maintenance of international peace and security and the prevention and peaceful settlement of disputes or situations. While some delegations were of the view that reference to

the maintenance of international peace and security only was broad enough, others were of the view that the prevention and peaceful settlement of disputes should be mentioned specifically. In response, one of the co-sponsors of L.62/Rev.1 agreed that the idea of the prevention and peaceful settlement of disputes was indeed included in the broad concept of maintenance of international peace and security. Accordingly, the idea of prevention and peaceful settlement of disputes could be mentioned in the preamble, while the operative paragraphs could only refer to the maintenance of international peace and security.

33. On the question of a definition of fact-finding, some delegations did not find it necessary to have a definition at this stage, while others stressed the importance of having one at the outset, and even suggested how the existing paragraph could be improved by being redrafted. In this connection, the suggestion was made that a definition of fact-finding, if provided, should instead simply list specific fact-finding activities which each of the principal organs of the United Nations would undertake. The suggestion was also made to merge paragraph 1 of A/AC.182/L.60/Rev.1 and paragraph 2 of A/AC.182/L.62/Rev.1 to provide a definition reading as follows: "For the purpose of the present paper, fact-finding means any activity by the competent United Nations organs designed to ascertain facts necessary to enable them to exercise effectively their functions in the field of prevention of disputes and maintenance of international peace and security." A similar drafting suggestion for a definition was made which, however, did not include reference to the prevention of disputes. Several delegations were of the view that, in considering the paragraphs of this cluster dealing, inter alia, with the definition of fact-finding, it was imperative to address the question of consent and sovereignty of States at the outset. In this connection, a specific drafting suggestion was made to insert in the cluster a provision to the effect that the sending of a United Nations fact-finding mission to the territory of any State required the prior consent of that State. But there was also the view that the problem of consent arose only when there was an unauthorized intrusion into the sovereignty of a State. The fact-finding missions of the United Nations were clearly not intended to violate the territorial integrity of any State.

34. As to specific comments on the paragraphs of cluster 1, the point was made that the term "decisions" in paragraph 1 of working paper A/AC.182/L.60/Rev.1 was too restrictive, and a suggestion was made to replace the phrase "making of decisions" by the phrase "consideration of the matter". In offering a clarification, one of the co-sponsors pointed out that the term "decisions" was used in the paragraph in its broad sense to encompass all the stages of consideration of a matter by the competent organ in the field of the maintenance of international peace and security and that a redrafting of the paragraph could cure the defect.

35. Several delegations expressed the view that the phrase "potentially dangerous situation" in paragraph 2 of working paper A/AC.182/L.60/Rev.1 was too vague, and the suggestion was made to use a language closer to the Charter, such as "situation which may threaten international peace and security". The question was also raised as to who would identify such a "potentially dangerous situation". The co-sponsors explained that the phrase was used to cover situations that had not developed into full-fledged conflicts and left room for drafting improvements. They also explained that the competent United Nations organs would identify such situations as well as determine whether they had sufficient information from the existing information-gathering capabilities of the Secretary-General. The point was also made that paragraphs 1 and 2 of L.60/Rev.1 treated fact-finding differently, since

in paragraph 1 fact-finding in general was linked to serve the specific needs of the organs of the United Nations in the fulfilment of their functions, while paragraph 2 seemed to suggest that fact-finding missions could be undertaken independently of such needs. In this connection, the view was expressed that account should be taken of the possibility of States concerned agreeing to settle the matter among themselves, thus rendering moot the need for a fact-finding mission. Another view was that paragraph 2 of L.60/Rev.1 as drafted assumed that the organs of the United Nations would be compelled to consider sending a fact-finding mission in every case, as a pre-condition of consideration of the matter. Since this was not the case, the paragraph was unnecessary. In response, one of the co-sponsors observed that the paragraph was not intended to presume that the competent organs would send a fact-finding mission, but that it was only one of the options to be considered when facts were needed. Another view pointed out that paragraph 2 of L.60/Rev.1 as drafted seemed to contain two conditions for sending fact-finding missions, one as soon as potentially dangerous situations were identified and the other when the fact-finding capabilities of the Secretary-General were not enough, and suggested that the general ideas of the paragraph be reformulated and placed in the preamble. However, there was the view which held that the ideas expressed in the paragraph were important, since they stressed the need for fact-finding at an early stage of a dispute or situation, and therefore their inclusion in the operative part of the document was supported. Another view went further to suggest that paragraphs 1 and 2 of L.60/Rev.1 should be merged. As to paragraph 1 of working paper A/AC.182/L.62/Rev.1, the suggestion was made that it be placed in the preamble. On the whole, there was the general view that the two working papers complemented each other with respect to cluster 1 and that it would not be difficult to reach agreement on provisions which included the elements of their basic ideas.

36. In introducing the paragraphs in cluster 2 from working paper A/AC.182/L.60/Rev.1, namely, paragraphs 3, 4, 6, 7, 8, 10 and 11, one of the co-sponsors made the following observations. With respect to paragraph 3, it was important to keep in mind that, apart from the main objective of fact-finding missions which was the attainment of impartial and detailed knowledge of the facts, fact-finding missions could also have the three possible side-effects mentioned in the paragraph, two of which were positive, namely, signalling the concern of the United Nations and building confidence, and one of which was negative, namely, the possible aggravation of the situation. Paragraph 4 did not restate the legal situation concerning the competence of the various United Nations organs, but enumerated in a neutral manner those organs which could undertake fact-finding missions. Paragraph 8 of the cluster was aimed at expressing clearly the policy suggestion of giving preference to the Secretary-General in carrying out fact-finding missions, since, in the view of the co-sponsors, the current practice had shown that the Secretary-General was better suited for that role.

37. In introducing the paragraphs of cluster 2 from working paper A/AC.182/L.62/Rev.1, namely, paragraphs 3, 4, 5 and 7, the co-sponsors made the following observations. Paragraph 3 addressed the question of the competence of various United Nations organs in undertaking fact-finding activities, distinguishing between the exercise of functions under Chapter VII of the Charter and the exercise of those not related to Chapter VII. Paragraph 4, which was aimed to avoid any overlap of fact-finding by the different United Nations organs, had been redrafted and was more in line with Article 12 of the Charter of the United Nations. Paragraph 5 had also been redrafted and, as mentioned earlier, gave preference to the Secretary-General by placing him first on the list of

possibilities for undertaking fact-finding activities. In paragraph 7, only the word "mandate" had been used, since it was understood as synonymous with "terms of reference". The co-sponsor stressed that the paragraph would encourage States to accept fact-finding missions by providing for the prior knowledge of the character of the report to be prepared by the mission.

38. With regard to paragraph 3 of working paper A/AC.182/L.60/Rev.1, the point was made that, as currently drafted, the paragraph undermined the role of the United Nations, since it seemed to imply that the only way of signalling the concern of the United Nations was the sending of a fact-finding mission. In this connection, the view was expressed that the provision relating to the signalling of the concern of the United Nations was unnecessary. It was also asked to whom the concern would be signalled. The co-sponsors responded underscoring that the signalling was only a side-effect of the sending of a mission. The concern of the United Nations would be signalled to the international community as a whole. It was also important to refer to the other two side-effects of sending a fact-finding mission, namely, confidence-building and defusing of situations. They stressed that the third sentence of paragraph 3 had been added in the light of the almost unanimous view during the debate of the previous session of the Special Committee that fact-finding missions should not aggravate a situation. Thus, this idea had to be expressed. The point was also made that the first sentence of paragraph 3 was more relevant to the definition of fact-finding and would therefore be better placed in cluster 1. The use of the word "impartial" was questioned on the ground that the concept of impartiality related more to the conduct of the mission than to the facts. In response, the co-sponsors suggested its replacement by the word "objective". Another question was whether the notion of fact-finding missions encompassed the sending of the Secretary-General or one of his representatives. The co-sponsors responded that it did. The suggestion was consequently made to replace the term "fact-finding mission" by the broader term "fact-finding activities" which included hearings at Headquarters.

39. With respect to the parallel paragraphs 4 of A/AC.182/L.60/Rev.1 and 3 of A/AC.182/L.62/Rev.1, some delegations were of the view that the general approach reflected in paragraph 4 of L.60/Rev.1 was preferable to the approach of paragraph 3 of L.62/Rev.1, which specifically referred to the chapters of the Charter. The co-sponsors responded that paragraph 3 of L.62/Rev.1 did not simply repeat the Charter, but provided an analysis of the functions of the various United Nations organs, particularly those of the Secretary-General, in the field of the maintenance of international peace and security and fact-finding. The view was also expressed that reference to Chapter VII of the Charter in paragraph 3 of L.62/Rev.1 was unnecessary, since action under Chapter VII could not be taken without knowledge of the facts, and that fact-finding, therefore, preceded the taking of a decision under Chapter VII. However, the point was also made that fact-finding could be undertaken under Chapter VII and that the primary responsibility of the Security Council in the maintenance of international peace and security had to be expressed. With respect to paragraph 4 of L.60/Rev.1, the suggestion was made to delete the phrase "in the context of their different roles in maintaining international peace and security", since a reference to the Charter was sufficient. The suggestion was also made to replace the phrase in question by the expression "in accordance with the functions assigned to them in the Charter" and to delete at the beginning of the paragraph the phrase "in accordance with the Charter of the United Nations". With respect to paragraph 3 of L.62/Rev.1, the point was made that the paragraph did not distinguish between the undertaking and the carrying out of a fact-finding mission. The view was expressed again that the

term "fact-finding missions" used in parallel paragraph 4 of L.60/Rev.1 was more restrictive than the term "fact-finding activities" used in paragraph 3 of L.62/Rev.1. The co-sponsors of L.60/Rev.1 pointed out, in this connection, that the term "fact-finding missions" was to be understood in a broad sense and that the working paper also focused on another means of fact-finding, namely, information gathering.

40. Regarding paragraph 4 of A/AC.182/L.62/Rev.1, the view was expressed that its inclusion might lead to a misinterpretation of Article 12 of the Charter and that the paragraph was, in any event, superfluous in the light of the provision already made that the competences of United Nations organs should be exercised in accordance with the Charter. The co-sponsors responded that, in their view, paragraph 4 of L.62/Rev.1 was necessary to spell out certain rules in order to avoid the possibility of the sending of competing fact-finding missions by various organs, which would undermine the use of the United Nations fact-finding mission. The idea was expressed that the policy of avoiding duplication of efforts was the gist of the paragraph and that it was worth retaining as such.

41. In connection with paragraph 6 of A/AC.182/L.60/Rev.1, the point was made that the paragraph was more restrictive than Article 35 of the Charter since, according to the paragraph, States would bring to the attention of United Nations organs only situations where the facts were disputed. The point was also made that reference to "any State" raised certain questions with regard to Article 35, paragraph 2, of the Charter, which sets out conditions under which States non-members of the United Nations may bring a dispute to the attention of the United Nations organs. The view was expressed that the possibility given to "any State" and therefore to a third State under paragraph 6 conflicted with the principle of the free choice of means of the parties for settling their disputes. As mentioned earlier, the difficulties concerning the phrase "potentially dangerous situation" in paragraph 2 of L.60/Rev.1 were raised. With regard to paragraph 7 of L.60/Rev.1, it was pointed out that the phrase "to its territory" was too restrictive, since it did not take into account the situation where a fact-finding mission was sent to several States. The co-sponsors, in response, suggested a redraft of the paragraph to the effect that all requests be given expeditious consideration.

42. With respect to the parallel paragraphs 8 of working paper A/AC.182/L.60/Rev.1 and 5 of working paper A/AC.182/L.62/Rev.1, the view was expressed, on the one hand, that a general formulation such as reflected in paragraph 8 of L.60/Rev.1 was preferable, while on the other hand, there was support for a listing such as the one made in paragraph 5 of L.62/Rev.1. The point was also made that both paragraphs complemented each other and that they could be reconciled or merged. There was a widely shared view that the Secretary-General was indeed, in most cases, the most suitable person to carry out a fact-finding mission. In this connection, some delegations were of the view that the listing in paragraph 5 of L.62/Rev.1 already gave a certain priority to the Secretary-General by placing him first on the list. The point was further made that the wording of paragraph 8 of L.60/Rev.1 in this respect was too rigid. Accordingly, the suggestion was made to add to that paragraph a phrase to the effect that consideration should also be given to the options, such as those contained in subparagraphs (b) and (c) of paragraph 5 of L.62/Rev.1. The co-sponsors of L.60/Rev.1 suggested the addition of the following phrase to paragraph 8: "who may designate a special representative or a group of experts reporting to him", to be complemented, if necessary, by the addition of the following sentence: "the appointment of a subsidiary body of the Security Council or the General Assembly could also be considered where

appropriate". The suggestion was also made to redraft paragraph 5 of L.62/Rev.1 to include the recommendation of paragraph 8 of L.60/Rev.1. With respect to subparagraph (b) of paragraph 5 of L.62/Rev.1, it was pointed out that the term "qualified" was unnecessary. Doubts were expressed as to the meaning of the ad hoc subsidiary bodies envisaged in subparagraph (c) of paragraph 5 of L.62/Rev.1. and clarification was also sought with regard to the phrase "primarily at Headquarters of the United Nations". The co-sponsors explained that subparagraph (c) was intended to cover another form of fact-finding activities, namely, those which are not undertaken in the field, such as fact-finding missions carried out through hearings at United Nations Headquarters.

43. Regarding paragraph 10 of working paper A/AC.182/L.60/Rev.1, the question was raised whether the envisaged delay in the sending of a fact-finding mission related to the problem of consent of the receiving State or to organizational aspects of the fact-finding mission. There was the view that the paragraph was unnecessary, since no problems of delay had been encountered in practice. Another view was that paragraph 10 had to be read in connection with paragraph 3 of L.60/Rev.1, stipulating that the sending of a fact-finding mission should not aggravate a situation. A drafting suggestion was made to add to paragraph 10 the phrase "subject to the prior consent of the receiving State", relating this requirement to the dispatch of the mission.

44. With respect to the parallel paragraphs 11 of A/AC.182/L.60/Rev.1 and 7 of A/AC.182/L.62/Rev.1, it was emphasized that the two paragraphs were quite similar. One of the co-sponsors of L.60/Rev.1 pointed out that, while paragraph 7 of L.62/Rev.1 appeared broader in scope by providing for the sending of a special representative or a fact-finding mission, paragraph 11 of L.60/Rev.1, which instead used the term "fact-finding missions", was equally broad and was more appropriate in connection with reference to a "sending organ". The view was however expressed that the two paragraphs should include another provision to the effect that States concerned should also be apprised of the facts contained in the report of the fact-finding mission.

45. In introducing the paragraphs in cluster 3 from working paper A/AC.182/L.60/Rev.1, namely, paragraphs 5 and 9, one of the co-sponsors observed that the two paragraphs were aimed at underscoring the role of the Secretary-General, which was to be enhanced, being the organ with the necessary flexibility for both the undertaking and/or the carrying out of the fact-finding.

46. In introducing the paragraphs in cluster 3 from working paper A/AC.182/L.62/Rev.1, namely, paragraphs 16, 16 bis, 16 ter, 17, 17 bis and 18, one of the co-sponsors pointed out that the six paragraphs altogether elaborated further the role of the Secretary-General with respect to fact-finding, consistent with the preference that had been given to him under paragraph 5 (a), indicating the various contexts in which the Secretary-General might exercise his functions in this area.

47. With respect to sub-cluster 3 (a), namely, paragraph 5 of A/AC.182/L.60/Rev.1 and paragraphs 16, 17 and 17 bis of A/AC.182/L.62/Rev.1, while some delegations supported the idea of the specific mention of Article 99 of the Charter in connection with the functions of the Secretary-General, others were of the view that a general reference to the functions of the Secretary-General under the Charter was sufficient. In this connection, the point was made that the second sentence of paragraph 5 of L.60/Rev.1 was unnecessary. Another point was that,

taken as a whole, the paragraph tended to imply that the sending of a fact-finding mission should always be the first option for the Secretary-General, whether or not a fact-finding mission was needed for the fulfilment of his functions under the Charter. There was also the view that these paragraphs on the functions of the Secretary-General were too elaborate and presented an unbalanced treatment of the Secretary-General in comparison with the other principal organs of the United Nations. A suggestion was also made that paragraphs 16, 17 and 17 bis of L.62/Rev.1 could first be merged and then further put together with the parallel provisions of paragraph 8 of L.62/Rev.1 as well as those of paragraph 5 of L.60/Rev.1. In this connection, the suggestion was made to merge the provision of the cluster as follows: "The Secretary-General should consider on his own initiative within the framework of his competences under the Charter or if the parties to the dispute so request, dispatching fact-finding missions in areas where danger might arise". Another suggestion for merging paragraph 5 of L.60/Rev.1 and paragraph 16 of L.62/Rev.1 read as follows: "In connection with carrying out of his functions under Article 99 of the Charter, the Secretary-General should consider undertaking fact-finding missions in areas where in his opinion disputes or situations exist which may threaten international peace and security". The last phrase of this formulation reflected objections which had been raised concerning the use of the phrase "dangerous situation" in paragraph 5 of L.60/Rev.1.

48. With respect to paragraph 17 bis of A/AC.182/L.62/Rev.1, the question was raised as to the meaning of "a treaty on the settlement of a dispute". In response, the co-sponsors explained that they had in mind, for example, the Geneva Agreements on the settlement of the question of Afghanistan. A further question was raised as to whether reference should be only to treaties concerning the settlement of disputes or to treaties in general. While some preferred specific mention of treaties concerning settlement of disputes, others were of the view that the paragraph should refer to treaties in general.

49. With respect to sub-cluster 3 (b), namely paragraphs 9 of A/AC.182/L.60/Rev.1 and 16 bis, 16 ter and 18 of A/AC.182/L.62/Rev.1, the view was expressed that paragraphs 16 bis and 16 ter could be redrafted to avoid the implication that either the Secretary-General or the General Assembly or the Security Council did not respond promptly to requests made to them. As to paragraph 16 ter of L.62/Rev.1, several delegations wondered how the Secretary-General could "promote" the use of United Nations fact-finding capabilities. The co-sponsors responded by pointing out that their idea was, in fact, better expressed in the French text, which asked the Secretary-General to encourage resort to United Nations fact-finding capabilities. The view was also expressed that resort to fact-finding capabilities at "as early a stage as possible" should be made applicable to all competent organs of the United Nations and not only to the Secretary-General as in paragraph 16 ter of L.62/Rev.1. Regarding paragraph 18 of L.62/Rev.1, the question was raised as to why particular reference was made to emergency fact-finding missions. In response, the co-sponsors explained that, in order to deal with emergency situations, certain technical capabilities had to be established beforehand. They further noted that the paragraph, however, applied also to normal situations. As to the question of the list of experts envisaged in the parallel paragraphs 9 of L.60/Rev.1 and 18 of L.62/Rev.1, there was, on the one hand, the view that such a list should be based on equitable geographical distribution, while, on the other hand, there was the view which pointed out the difficulties of applying such a concept in the establishment of a list of experts. According to the latter view, criteria such as those contained in Article 101 of the Charter, with respect to United Nations officials, would suffice. The point was also made

that it might be necessary to clarify whether such a list would be available to any other organs or to Member States. The co-sponsors confirmed that the list was intended to be available to all concerned. The suggestion was also made to add in the first sentence of paragraph 18 of L.62/Rev.1 the phrase "within existing resources".

50. In introducing the paragraphs of cluster 4 from A/AC.182/L.60/Rev.1, namely, footnote 1 and paragraphs 13 to 17, one of the co-sponsors made the following points. He reiterated that paragraph 13 stated the basic policy suggestion encouraging States to admit fact-finding missions to their territory. The co-sponsor noted that, because of its emphasis on policy suggestions for strengthening the role of the United Nations, working paper L.60/Rev.1 preferred to deal with the underlying legal principle of consent in the preamble as suggested in the footnote. He pointed out that paragraphs 14 to 17 were thus designed to elaborate on the general rule stated in paragraph 13. He also observed that the second sentence of paragraph 16 was intended to give an incentive to States to make a unilateral declaration of acceptance of a fact-finding mission by making clear that also such States would be given an opportunity to voice their views.

51. In introducing the paragraphs of cluster 4 from A/AC.182/L.62/Rev.1, namely, paragraphs 6 and 19, one of the co-sponsors pointed out that paragraph 6 stated the important principle that consent was a prerequisite to the sending of a fact-finding mission. He further observed that the purpose of paragraph 14 was to establish another basis on which fact-finding of the United Nations may be used by States, namely, by providing for their use in relevant treaties.

52. A large number of delegations considered consent of States as a prerequisite to the sending of fact-finding missions and that it safeguarded the sovereignty of States. According to them, consent was too important a principle to be relegated to a statement in the preamble. It was further observed, in this connection, that a broad reference to the Charter of the United Nations was preferable to reference only to Article 25 of the Charter in the parallel provision of paragraph 6 of A/AC.182/L.62/Rev.1 and of the footnote of A/AC.182/L.60/Rev.1 dealing with the question of consent. However, specific mention of Article 25 was preferred by some delegations. The suggestion was then made to merge the provisions of the footnote of L.60/Rev.1 and paragraph 6 of L.62/Rev.1 to read as follows: "The sending of a United Nations fact-finding mission to the territory of any State requires the prior consent of that State, without prejudice to its international obligations under the Charter of the United Nations". The point was made, in this connection, that attention should be paid to the difficulty arising from the use of the phrase "territory of a State" in various paragraphs of the cluster in situations where there were competing claims of sovereignty over a territory to which the dispute relates. The question was raised as to whether consent in these paragraphs referred only to the sending of a fact-finding mission, or also to the individual members of the mission. The view was also expressed that paragraphs 13 to 17 were too negative and tended to assume that States would be reluctant to accept fact-finding missions. A suggestion was made to redraft them to provide positively that States should be encouraged to admit fact-finding missions in their territory, since this would be consistent with the current spirit of encouraging co-operation among States. In that connection, the suggestion was further made that paragraph 13 as thus redrafted could be better placed in the preamble. Another view was that the application of paragraphs 13 to 17 would lead to a derogation of sovereignty of States and that they were consequently unacceptable. There was also the view that fact-finding missions of the United Nations could not pose a threat

to the sovereignty of a State and that they could indeed be used to protect the interests of small States.

53. A number of delegations had difficulty specifically with the idea expressed in paragraph 14 of A/AC.182/L.60/Rev.1 to the effect that consent could be presumed by silence. As to paragraph 15 of L.60/Rev.1, while some delegations saw the need for requiring States to indicate their reasons for not admitting fact-finding missions, others were of the opinion that such a requirement was unwise in that there might be some situations in which the fulfilment of this would not be possible for delicate political reasons. With respect to paragraphs 16 and 17 of L.60/Rev.1, it was pointed out that, given the nature of complicated questions relating to the legal status of unilateral declarations, it was not certain how that concept could be applied in the context of fact-finding. Other delegations, however, welcomed it as a novel idea which could be applied in that context. However, a further question was raised as to why States which had made unilateral declarations were rewarded by being given the opportunity to express their views to the sending organ. In response, the co-sponsors explained that States that had not made such unilateral declarations accepting in advance fact-finding missions in their territories would have the automatic opportunity to express their views to the sending organ when a request was made to them. The second sentence of paragraph 16 was thus aimed at allowing States having made unilateral declarations accepting fact-finding missions in advance also the opportunity of expressing their views before the sending of a fact-finding mission.

54. Regarding paragraph 6 of A/AC.182/L.62/Rev.1, the question was raised as to the meaning of the phrase "relevant international obligations of States". In response, the co-sponsors explained that the phrase was meant to include obligations deriving from treaties specifically containing provisions on fact-finding by the United Nations, such as the Geneva Agreements on the question of Afghanistan. With respect to paragraph 19 of L.62/Rev.1, the suggestion was made that the specific means of settlement of disputes therein referred should be listed, i.e., negotiation, good offices, mediation, inquiry, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements and other peaceful means of the parties' own choice.

55. In introducing the paragraphs of cluster 5 from working paper A/AC.182/L.60/Rev.1, namely, paragraphs 18, 19, 12 and the second sentence of paragraph 16, one of the co-sponsors pointed out that the obligations spelt out therein were incumbent not only upon the receiving State, but upon all States. Paragraph 18 stated a general obligation, which was further specified in a slightly redrafted paragraph 19. Paragraph 12 was intended to underline the principle that fact-finding missions had to work in an impartial manner in order to obtain an objective result.

56. In introducing the paragraphs of cluster 5 from working paper A/AC.182/L.62/Rev.1, namely, paragraphs 8 to 11, one of the co-sponsors observed that these paragraphs stated necessary principles for the successful conduct of a fact-finding mission. He noted that the obligations of States had been redrafted in a more positive tone and further elaborated in paragraph 9 bis in the light of recent United Nations practice. The paragraphs on the obligations of fact-finding missions were the counterparts of those paragraphs dealing with the obligations of States and the former were meant to give States assurances that the fact-finding missions would work properly. The co-sponsors pointed out the importance of

paragraph 10, which provided States concerned with the opportunity to state their positions on the facts contained in the report of a fact-finding mission and not necessarily on the report as a whole, since some parts of the latter might be confidential. As for paragraph 11, the co-sponsors explained that the 1907 Hague Convention for the Pacific Settlement of International Disputes referred to in the earlier draft did not contain any general rules of procedure. Reference to the Convention had therefore been deleted. However, the idea that fact-finding missions should establish their own rules of procedure or some basic rules had been retained in paragraph 11.

57. With respect to sub-cluster 5 (a), namely paragraphs 18 and 19 of A/AC.182/L.60/Rev.1 and paragraphs 8 and 8 bis of A/AC.182/L.62/Rev.1, the general view was that the principle of co-operation of States was essential. It was noted, in this connection, that the consent of the receiving State was necessary to ensure this co-operation. Some delegations preferred a detailed list of freedoms and facilities to be granted to fact-finding missions, which would eliminate incidental problems of interpretation of general clauses. Others were in favour of a broader formulation, with a reference to the Convention on the Privileges and Immunities of the United Nations, which in their view covered most of the privileges spelt out in paragraph 19 of L.60/Rev.1. The co-sponsors of L.60/Rev.1 observed that the freedoms and facilities in subparagraphs (a) to (f) of paragraph 19 of L.60/Rev.1 were not included in the Convention and had therefore to be expressly stated. Moreover, the reference to the Convention concerned the members of the mission, while the previous subparagraphs referred to the mission as such. The suggestion was made to merge the parallel paragraphs 19 of L.60/Rev.1 and 8 bis of L.62/Rev.1 by, for example, including the provision in subparagraph (a) of paragraph 19 of L.60/Rev.1 in paragraph 8 bis of L.62/Rev.1. The suggestion was also made to merge all the paragraphs in the cluster as follows: "After having accepted United Nations fact-finding missions, all States should co-operate with and give full and prompt assistance to them in all aspects of their activities. Fact-finding missions should be granted all freedoms and facilities needed for fulfilling their task". This could then be followed by the provisions of subparagraph (b) of L.60/Rev.1 and subparagraphs (b) and (c) of L.62/Rev.1. The suggestion was also made that the following phrase be added to the reference in the cluster to the Convention on the Privileges and Immunities of the United Nations "for the purposes of the performance of the functions of the missions".

58. It was also pointed out that co-operation of States in this context may be limited by economic and other means at their disposal. The co-sponsors of A/AC.182/L.60/Rev.1 responded that the co-operation envisaged under the paragraph did not entail any financial or other material obligations. The question was also raised as to whether a national of the receiving State would be permitted to participate in the fact-finding mission. The co-sponsors replied that the composition of the fact-finding mission was decided upon by the competent United Nations organs and that States could in any case make such a request as a condition for their consent to the fact-finding mission. In this case, they would have to endure the possible negative political consequences of this attitude being interpreted by the sending organ as a refusal of consent. With respect to paragraph 18 of L.60/Rev.1, the view was expressed that the term "prompt" was unnecessary. As to paragraph 19 of L.60/Rev.1, the suggestion was made to replace the term "task" by the term "mandate" and also to delete its subparagraph (f) which seemed to imply that censorship was practised in the receiving State. A further suggestion was made to separate subparagraph (g), which concerned the individual members of the fact-finding mission, from the preceding subparagraphs, which

referred to the mission as a whole. It was also suggested to include the phrase "in accordance with national law" in subparagraph (a) of paragraph 8 bis of L.62/Rev.1.

59. With respect to sub-cluster 5 (b), namely, paragraph 12 and the second sentence of paragraph 16 of A/AC.182/L.60/Rev.1 and paragraphs 9 to 11 of A/AC.182/L.62/Rev.1, the view was expressed that the two working papers were complementary and that the cluster could be merged, provided care was taken to ensure that the obligations contained in paragraph 9 of L.62/Rev.1 were retained. In this connection, it was suggested that the phrase "without prejudice to their privileges and immunities" in that paragraph be deleted. But there were those who, like the co-sponsors of L.62/Rev.1, wanted the phrase to be retained there as an essential savings clause. With respect to paragraph 10 of L.62/Rev.1, the view was expressed that the phrase "whenever appropriate" was unnecessary. But there was also the view that the phrase was necessary, since it referred to cases where the situation might be aggravated if the report of the fact-finding mission were to be publicized. The question also was raised as to whether it was necessary to include paragraph 10 since States would in any case have the opportunity to state their positions when the report of the fact-finding mission was brought before the Security Council or the General Assembly. The question was also raised as to the meaning of the phrase "States directly concerned". The co-sponsors replied that the phrase referred to States that had given their consent to the sending of a fact-finding mission. With respect to paragraph 11 of L.62/Rev.1, the view was expressed that it was necessary to include certain basic rules of procedure for fact-finding missions. The suggestion was made that, instead of detailed rules, a provision such as the following might be included: "whenever appropriate, if fact-finding includes hearings and other similar procedures, rules of procedures should be envisaged". The point was also made that these rules of procedure would be included in the mandate of the fact-finding body. The view was also expressed that the language in paragraph 11 was most appropriate for judicial or semi-judicial bodies and therefore went beyond the scope of the working paper. The question was also raised as to the use of the word "commission" in the chapeau. The co-sponsors suggested its replacement by the word "mission".

60. In introducing the paragraphs of cluster 6, namely, paragraphs 20 to 23 of A/AC.182/L.60/Rev.1, one of the co-sponsors observed that the paragraphs related to information gathering which, together with the sending of a fact-finding mission, were the two aspects of fact-finding by the United Nations considered in the working paper. He further observed that information gathering by the United Nations Secretariat was an important element of the strengthening of the role of the United Nations. Paragraph 20 described the actual practice of the Secretary-General in the light of his functions under Article 99 of the Charter and his implied powers to obtain knowledge of the facts in order to form his opinion on the existence of a threat to international peace and security. The co-sponsor noted that some of the language of the paragraph was inspired from the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field (see General Assembly resolution 43/51, annex, of 5 December 1988). Paragraph 21 referred to the Secretariat's already existing early warning machinery, which should be enhanced. The co-sponsor noted that the language of paragraph 22 had been softened in the light of the debate of the previous session and that paragraph 23 referred to an emergency situation.

61. While the view was expressed that the information-gathering capabilities of the Secretary-General should indeed be enhanced, the point was also made that the existing capabilities in this respect were sufficient and it was not necessary to deal with the question in the working paper. The co-sponsors responded that there was still room to improve the existing structures of the Secretariat. The question was also raised as to whether the working paper was in line with respect to existing structures of the Secretariat, in particular the Office for Research and the Collection of Information and the Department of Public Information. The point was further made that the cluster had to be considered in the light of the financial constraints of the Organization and the current restructuring of the Department of Public Information of the Secretariat. Another suggestion was that under the information gathering there should be considered the possibilities of the exchange of information between the United Nations and regional organizations and the use of modern technology in the information-gathering activities.

62. With respect to paragraph 20 of A/AC.182/L.60/Rev.1, the question was raised as to the procedure by which the Secretary-General would survey the situation of international peace and security and, in particular, as to the periodicity of the survey. In this connection, it was pointed out that such a survey existed already in the annual report of the Secretary-General to the General Assembly. The question was also raised as to which information the Secretary-General would bring to the attention of the Security Council. The co-sponsors clarified that it was the information obtained by the survey of the international situation by the Secretary-General, which it was important in his opinion to bring to the attention of the Security Council. Doubts were expressed as to the relation between a survey of the international situation by the Secretary-General and the decrease of threats to the maintenance of international peace and security. Regarding paragraph 21, the question was raised as to the meaning of the phrase "full use". The question was also raised as to the meaning of the term "early warning". The co-sponsors explained that it referred to the need to obtain early information and that the language used was that of the resolution, which later gave rise to the creation of the Early Warning Service of the Office for Research and the Collection of Information. As to paragraph 22, it was asked whether it was necessary since the United Nations would already be aware of published information. The co-sponsors clarified the meaning of the phrase "publicly available" by stressing that it included information which was not available in written form. The point was made that the question of the use of United Nations information centres for activities relating to the maintenance of international peace and security was complex since, in practice, the directors of the information centres were also the directors of the United Nations Development Programme and that their latter functions had priority over those relating to the question of maintenance of international peace and security. The view was also expressed that United Nations information centres were meant to provide information to the host States and not to the United Nations. With regard to paragraph 23, it was pointed out that the paragraph could provoke certain suspicions from the host States, since it implied that United Nations representatives may be called upon to perform activities falling outside the scope of their normal functions.

63. In introducing the paragraphs of cluster 7, namely, paragraphs 20 and 21 of working paper A/AC.182/L.62/Rev.1, one of the co-sponsors observed that the paragraphs contained savings clauses. Paragraph 20 was intended to safeguard the principle of free choice of means for the peaceful settlement of a dispute. Paragraph 21 made specific reference to Article 2, paragraph 7, of the Charter of the United Nations because it was a very important provision.

64. In commenting on the paragraphs of the cluster, several delegations supported the inclusion of such savings clauses. With respect to paragraph 20 of A/AC.182/L.62/Rev.1, the point was made that the paragraph seemed to imply that United Nations fact-finding missions were a means of peaceful settlement of disputes and it might therefore be redrafted. The co-sponsors indicated that the paragraph was intended to avoid an overlap between the sending of a United Nations fact-finding mission with respect to a dispute and action by the parties to the disputes. A question was also raised as to whether reference to a treaty on settlement of disputes was necessary in that paragraph. The point was also made that if a treaty such as envisaged existed, it should be given priority over the sending of a United Nations fact-finding mission. The co-sponsors, in response, noted that there was no issue of priority and that the paragraph referred to two independent actions, namely, the sending of a United Nations fact-finding mission and the peaceful settlement of disputes by the States concerned. As for paragraph 21, while some delegations were of the view that a general reference to the Charter provisions without specific mention of Article 2, paragraph 7, was sufficient, others were of the view that the specific Article should be mentioned.

65. In introducing cluster 8, namely, paragraphs 12, 14, 15 and 15 bis of A/AC.182/L.62/Rev.1, one of the co-sponsors observed that their intention had not been to repeat the Charter of the United Nations, but that specific Articles of the Charter had been mentioned to encourage the Security Council and the General Assembly to resort to fact-finding in the fulfilment of their functions. He further noted that the paragraphs attempted to indicate areas where fact-finding could be resorted to by the above-mentioned organs. Subparagraph (a) of paragraph 12 lumped together recommendations and decisions, prevention and settlement of disputes, since they were linked in practice. Subparagraph (d) of paragraph 12 underlined that fact-finding could be used by the Security Council to monitor the implementation of its decisions in the field of the maintenance of international peace and security.

66. Some delegations were of the view that the paragraphs of the cluster went into too many details and that this might risk a misinterpretation of the Charter and raise issues which did not need to be raised. Thus, they preferred a general reference to the Charter of the United Nations. The co-sponsors noted that, although mention of specific Articles of the Charter in paragraphs 14 and 15 could be deleted, it was necessary to refer to specific Articles with regard to the various functions of the Security Council under the Charter. Other delegations were of the view that the ideas contained in the paragraphs should be included, in particular subparagraph (d) of paragraph 12. Support was also expressed for paragraph 15 bis.

67. In the course of the joint discussion of working papers A/AC.182/L.60/Rev.1 and A/AC.182/L.62/Rev.1, several delegations made comments on the translation of the two papers from the English original. In particular, it was noted that throughout the text the term "should" had not been translated correctly into French (regarding working paper L.60/Rev.1) and into Spanish (regarding both working papers) and that it should be translated by the conditional "devrait" and "debería", respectively. Regarding the Spanish version of paragraph 2 of L.60/Rev.1, it was suggested to replace the term "datos" by "hechos" and regarding paragraph 11 of L.60/Rev.1, it was suggested to replace the term "atribuciones" by "instrucciones" or "mandato". With respect to paragraph 22 of L.60/Rev.1, it was noted that the second sentence had not been correctly translated into French. Regarding the

French version of paragraph 6 of L.60/Rev.1, it was suggested to substitute the term "assentiment" by "consentement".

68. On the basis of the joint discussion of the two working papers, A/AC.182/L.60/Rev.1 and A/AC.182/L.62/Rev.1, and further work done by the co-sponsors, a unified document was prepared and presented to the working group by the co-sponsors (A/AC.182/1990/CRP.2, later produced as document A/AC.182/L.66). The text of this document is set forth below:

"Fact-finding by the United Nations in the field of the maintenance of international peace and security

"Preambular paragraph

"Recognizing that the full use and further development of the fact-finding capabilities of the United Nations could contribute to the strengthening of the role of the United Nations in the maintenance of international peace and security,

"I

"1. In performing its functions for the maintenance of international peace and security, the United Nations should have full knowledge of all relevant facts. To this end it should consider undertaking fact-finding activities.

"2. For the purpose of the present paper, fact-finding means any activity designed to ascertain facts which the competent United Nations organs need to exercise effectively their functions in the field of the maintenance of international peace and security.

"3. Fact-finding should be comprehensive, objective and impartial.

"4. As soon as a situation that might threaten the maintenance of international peace and security is identified, the United Nations should consider sending a fact-finding mission to the relevant areas, unless all the facts can be obtained through the use of the existing information-gathering capabilities of the Secretary-General.

"II

"5. In deciding if and when a fact-finding mission should be undertaken, the competent United Nations organs should keep in mind that the purpose of fact-finding missions should be to gain objective and detailed knowledge of the facts. They should also consider that the sending of a fact-finding mission may signal the concern of the United Nations as a whole and serve as a means for building confidence. However, precautions should be taken so that the fact-finding mission results rather in defusing than in aggravating the situation.

"6. Fact-finding missions may be undertaken by the Security Council, the General Assembly and the Secretary-General, in the context of their respective responsibilities in maintaining international peace and security in accordance with the Charter of the United Nations.

"7. In deciding to whom to entrust the conduct of a fact-finding mission, the Security Council and the General Assembly should give preference, in general, to the Secretary-General, who may designate a special representative or a group of experts reporting to him. Resort to an ad hoc subsidiary body of the Security Council or the General Assembly may also be considered.

"8. In considering the possibility to undertake fact-finding missions, the competent United Nations organs should keep in mind the necessity of avoiding duplication of efforts.

"9. States should be encouraged to bring any situation that is likely to threaten the maintenance of international peace and security, and where the facts are in dispute, to the attention of a competent organ of the United Nations, which should consider effective ways to ascertain such facts.

"10. Any request for the sending of a United Nations fact-finding mission by a State concerned to its territory, should be given expeditious consideration.

"11. Once the decision has been made to undertake a fact-finding mission, the mission should be dispatched without delay.

"12. The decision by the competent United Nations organ to undertake fact-finding should always contain a clear mandate and precise requirements for the report. The report should be limited to a statement of facts.

"13. The sending of a United Nations fact-finding mission to the territory of any State requires that State's prior consent without prejudice to the obligation of Member States under Article 25 of the Charter.

"14. States should be encouraged to follow a policy of admitting United Nations fact-finding missions to their territory.

"15. The sending United Nations organ is encouraged to ask the receiving State to answer the organ's request to admit the mission within a given period.

"16. Any request for the consent of a State to receive a fact-finding mission within its territory should be given timely consideration.

"17. In the event a State refuses to admit a United Nations fact-finding mission to its territory, it should inform the sending United Nations organ without delay, indicating the reasons for its refusal, when appropriate. It should keep the possibility of admitting the fact-finding mission under active review.

"18. States may at any time declare that they commit themselves to admit to their territory any United Nations fact-finding mission dispatched to assist in the maintenance of international peace and security. These States shall be given an opportunity to voice their views to the sending United Nations organ.

"19. These general unilateral declarations may also be made only for certain types of fact-finding missions or for a certain time. The Secretary-General shall give adequate publicity to such declarations.

"20. States should be encouraged to include provisions on the use of United Nations fact-finding missions in agreements they might conclude for the peaceful settlement of disputes.

"21. States should co-operate with, and give full and prompt assistance to, United Nations fact-finding missions.

"22. Fact-finding missions should enjoy all freedoms and facilities needed for discharging their mandate. In particular:

"(a) They should promptly be admitted in the areas to which they have been dispatched;

"(b) They should have freedom of movement and, in accordance with national law, full access to such places and information as they consider relevant to the performance of their task;

"(c) They should be entitled to discharge their mandate in full confidentiality without any pressure or interference;

"(d) They should have the right to communicate freely with the United Nations and among themselves, and with all persons they consider relevant for the discharge of their mandate, with full guarantee that no harmful consequence will be incurred by these persons.

"23. The members of fact-finding missions should enjoy the privileges and immunities specified in the Convention on the Privileges and Immunities of the United Nations.

"24. Fact-finding missions shall act in strict conformity with their mandate. Without prejudice to their privileges and immunities, their members shall respect the laws and regulations of the State in the territory of which they exercise their functions.

"25. Fact-finding missions should perform their task in an impartial way. Their members shall not seek or receive instructions from any Government or from any authority other than the competent United Nations organ.

"26. States directly concerned by the report of a fact-finding mission should be given an opportunity, whenever appropriate, to let the sending organ know their views in respect of the facts reflected in the report.

"27. Whenever fact-finding includes hearings, appropriate procedural guarantees should be provided for in the rules of procedure that may be adopted.

"28. The Secretary-General, on his own initiative or at the request of States concerned, should consider undertaking fact-finding missions in areas where a situation exists which might threaten the maintenance of international peace and security. He may, where appropriate, bring the information obtained to the attention of the Security Council.

"29. The Secretary-General should pay special attention to using the United Nations fact-finding capabilities at as early a stage as possible, in order to contribute to the prevention of disputes and situations which may threaten the maintenance of international peace and security.

"30. The Secretary-General should be encouraged to prepare and update lists of experts in various fields so as to have them available at any time for fact-finding missions. He should also maintain and develop, within existing resources, capabilities for the event of emergency fact-finding missions.

"31. The Security Council should consider the possibility to undertake fact-finding to obtain the knowledge of the facts needed for discharging effectively its responsibility in the maintenance of international peace and security in accordance with the Charter.

"32. The Security Council should, wherever appropriate, consider the possibility to provide for fact-finding in implementing its resolutions.

"33. The General Assembly should consider the possibility to undertake fact-finding to obtain the knowledge of the facts needed for exercising effectively its functions under the Charter for the maintenance of international peace and security.

"34. The General Assembly should, wherever appropriate, consider the possibility to provide for fact-finding in implementing its resolutions relevant to the maintenance of international peace and security.

"III

"35. The Secretary-General should survey the world-wide state of international peace and security regularly and systematically to facilitate the prevention or removal by the United Nations of situations which might threaten international peace and security. The Secretary-General's capacity to provide early warning of such situations should be enhanced. Where appropriate, he should bring relevant information to the attention of the Security Council.

"36. To this end he should make full use of and continue to strengthen the information-gathering capabilities of the Secretariat. This may include, when necessary, the use of United Nations information centres to collect publicly available information related to international peace and security.

"37. The Secretary-General should encourage United Nations officials outside Headquarters to bring to his early attention, whenever urgent, any situation which may threaten international peace and security.

"IV

"38. The sending of a United Nations fact-finding mission shall be without prejudice to the use by the States concerned of inquiry or any similar procedure provided for in a treaty between them.

"39. Nothing in the present paper shall be construed as prejudicing in any manner the provisions of the Charter, including those contained in Article 2,

paragraph 7, thereof, or the rights and duties of States, or the scope of the functions and powers of the United Nations organs under the Charter."

69. The first 12 paragraphs of the document were subject to extensive comments during the informal consultations held by the Chairman, while the rest of the paragraphs benefited from general observations. In the Working Group, the Chairman observed the document had been generally welcomed and the efforts of the co-sponsors in producing it appreciated. The co-sponsors confirmed that they had taken note of the useful comments which had been made on it during the informal consultations and that they intended to prepare a revised version of the document.

IV. PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES

Statement of the Rapporteur

A. General exchange of views

70. At its 137th meeting, on 21 February 1990, the Special Committee held a general exchange of views on the question of the peaceful settlement of disputes between States, since there were no specific proposals before the Committee on this item of its mandate.

71. Several delegations emphasized the importance of the principle of the peaceful settlement of disputes and stressed the commitment of their respective countries to it. It was observed that the principle was vital particularly to small nations, for which it offered protection against settlement through the use of force. The view was also expressed that the two principles of the peaceful settlement of disputes and the non-use of force in international relations went hand in hand.

72. Several delegations also stressed the importance of the question of the peaceful settlement of disputes in the work of the Committee. It was recalled that the peaceful settlement of disputes was a topic on which the Special Committee had produced its first Declaration adopted by the General Assembly, namely, the Manila Declaration on the Peaceful settlement of International Disputes (see General Assembly resolution 37/10, annex, of 15 November 1982), which provided an assessment of the existing means of peaceful settlement of disputes. The recent achievements of the Committee in this respect, namely, the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field (see General Assembly resolution 43/51, annex, of 5 December 1988) and the working paper on the resort to a commission of good offices, mediation or conciliation within the United Nations, were also recalled. It was also noted that a substantial portion of the current work of the Special Committee on fact-finding involved encouragement to third party participation in the peaceful settlement of disputes. Moreover, one delegation stated that concrete proposals on the topic would be presented at the next session of the Special Committee. In this connection, support was expressed for the suggestion made by that delegation in the general debate of the Special Committee to strengthen the co-operation between the United Nations and regional organizations for the peaceful settlement of disputes and the maintenance of international peace and security.

73. A number of delegations observed that the essential problem relating to the peaceful settlement of disputes was the lack of political will to use existing mechanisms for the peaceful settlement of disputes. It was stated, in this connection, that the Special Committee, as well as the Sixth Committee, had the task of strengthening this machinery and enhancing the ability of the Organization to resolve disputes peacefully. The need to enhance in particular the role of the International Court of Justice was emphasized.

74. Most delegations taking part in the exchange of views observed that there were significant trends in the international community within and outside the realm of the United Nations, pointing to the fact that the peaceful settlement of disputes was attracting greater interest on the part of States and there was increasing recognition that the acceptance of voluntary or even compulsory means for the

peaceful settlement of disputes was not necessarily a threat to national sovereignty, but could in fact be in the national interest. In this connection, attention was drawn to the ongoing talks between permanent members of the Security Council about the question of the compulsory jurisdiction of the International Court of Justice, as well as to the withdrawal of reservations by several member States with respect to treaty clauses giving compulsory jurisdiction to the Court. Several delegations expressed optimism about the future consideration of the item on the peaceful settlement of disputes in the Special Committee in the light of these new trends.

75. The point was made that the question of the peaceful settlement of disputes would be a major element of the programme of the United Nations Decade of International Law. It was observed in this connection that the Special Committee should play some role in this respect, for example, in the preparation of a general instrument on the peaceful settlement of disputes. The view was also expressed that the principle of the peaceful settlement of disputes involved both political and economic disputes and that the programme of the United Nations Decade of International Law should therefore consider all aspects of international law, including the economy and the environment. With respect to the latter point, the proposal to set up a mechanism for the prevention and the solution of international environmental disputes was recalled. The idea of encouraging States to use peaceful means for the settlement of disputes was suggested as a prime topic to be stressed by the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law.

76. Some delegations pointed out the problem of the technical and financial means for the peaceful settlement of disputes for certain States. In this connection, attention was drawn to the assistance to be provided by the creation of the Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice, for which several delegations expressed appreciation.

77. It was observed that there was a procedural problem relating to the question of the peaceful settlement of disputes, since the question was discussed not only in the Special Committee itself but also in the Sixth Committee, both under the item on the peaceful settlement of disputes and under that on the United Nations Decade of International Law, and that the work of the Organization needed to be rationalized in that respect. The view was also expressed that, although there was indeed a need to rationalize the work of the United Nations on the peaceful settlement of disputes, there was a distinction between the consideration of the item within the context of the Special Committee and its consideration within the context of the Decade of International Law. In the former case, the principle of the peaceful settlement of disputes was examined within the framework of the Charter of the United Nations, while in the latter the principle was examined within the broader concept of international law.

B. Examination of the report of the Secretary-General on the progress of work on the draft handbook on the peaceful settlement of disputes between States

78. The Special Committee had before it, as requested by the General Assembly in paragraph 7 of its resolution 44/37 of 4 December 1989, the Secretary-General's progress report on the draft handbook on the peaceful settlement of disputes

between States (A/AC.182/L.64), which contained updated information on the preparation by the Secretariat of the draft handbook. In particular, the progress report gave information on the meetings of the Consultative Group on the Handbook on the Peaceful Settlement of Disputes between States, composed of competent individuals from among the members of the permanent missions of the States Members of the United Nations in New York, held on 17 April, 15 September and 11 December 1989 and 5 February 1990, under the chairmanship of the Under-Secretary-General, the Legal Counsel, which reviewed the drafts of sections of chapter II of the handbook, prepared by the Secretariat, dealing with good offices, judicial settlement, resort to regional agencies or arrangements and other peaceful means and chapter IV on procedures envisaged in other international instruments.

79. At the 138th meeting of the Special Committee, on 22 February 1990, the Legal Counsel introduced the progress report.

80. Several delegations expressed their appreciation to the Secretariat for its work on the elaboration of the draft handbook, and expressed their satisfaction with the assurance given in the report that the draft handbook would be completed before the next session of the Special Committee. The usefulness of the handbook in assisting States, particularly developing countries, in the area of the peaceful settlement of disputes was emphasized. The view was also expressed that the handbook would be useful in the consideration of future proposals on the question, particularly in the preparation of a universal convention on the peaceful settlement of disputes within the framework of the Decade of International Law. It was also suggested that, when completed, the handbook should be widely distributed.

81. Certain specific points on the final form of the handbook were raised. It was suggested that the handbook should have an index and annexes. With respect to the latter, some specific suggestions were offered. The point was also made that consideration be given to produce the handbook in loose-leaf form so that it could be easily updated. The Secretariat noted all these points and clarified that the preparation of an index for the handbook had indeed been foreseen and that the Secretariat would inform the Consultative Group of the annexes it intended to include in the handbook when presenting the last remaining chapter of the draft handbook. The Secretariat also took note of a request to distribute the complete draft handbook to the members of the Consultative Group.

82. The Commmittee took note of the report.

V. RATIONALIZATION OF EXISTING PROCEDURES OF THE UNITED NATIONS

Statement of the Rapporteur

83. As requested by the General Assembly in paragraph 4 of General Assembly resolution 44/37, the Working Group, at its 9th, 10th and 12th meetings, held on 16 and 27 February 1990, kept under active review and considered the question of the rationalization of the procedures of the United Nations.

84. The Working Group had before it a revised version of a draft document on the rationalization of existing United Nations procedures (A/AC.182/L.43/Rev.5), which had originally been presented at the Special Committee's 1985 session 6/ and subsequently revised at its 1986, 1987 and 1989 sessions. 7/ The Special Committee also had before it a proposal contained in a conference room paper submitted at its 1989 session and set out in paragraph 101 of that session's report, 8/ as well as various proposals submitted by delegations during the session, and a paper (A/AC.182/L.67) submitted by the Chairman following informal consultations.

85. In the course of the adoption of the document set out below, some delegations stated that they would have preferred that paragraph 1 be the one provisionally adopted by the Special Committee at its 1988 session and reflected in paragraph 76 of that session's report, 9/ but did not wish to prevent the Committee from reaching a general agreement on the document as a whole. Other delegations would have preferred not to include in the document the subject-matter covered by paragraph 1 and to delete the paragraph altogether. In a spirit of compromise and in order not to obstruct the reaching of a general agreement on the document as a whole, they accepted the present formulation of paragraph 1.

86. As a result of intensive work, the Special Committee completed the draft document on the rationalization of existing United Nations procedures, which it submits to the General Assembly for consideration and adoption:

"Rationalization of existing United Nations procedures

"1. Without prejudice to article 18 of the Charter and with a view to facilitating the work of the United Nations, including, whenever possible, the adoption by the General Assembly of agreed texts of resolutions and decisions, informal consultations should be carried out with the widest possible participation of Member States.

"2. When an electronic voting system is available for recording how votes were cast, a roll-call vote should as far as possible not be requested.

"3. Before the end of each General Assembly session, the General Committee should, in the light of the experience it has acquired during that session, consider drawing up its observations on the organization of the work of the session, with a view to facilitating the organization of the work of future sessions of the General Assembly.

"4. The agenda of the General Assembly should be simplified by grouping or merging, to the extent possible, related items and, where it is appropriate

for discussion of a particular item, by setting an interval of more than a year between the discussions on it. For this purpose, the Chairman of the Main Committee concerned or, as appropriate, the President of the General Assembly, should undertake consultations with delegations.

"5. The General Committee should consider, at the beginning of each session of the General Assembly, recommending that certain Main Committees should meet in sequential order, taking into account such matters as the number of meetings required for the consideration of the questions with which they are charged at that session, the organization of the work of the whole session and the problem of participation of smaller delegations.

"6. In making recommendations as to how agenda items should be allocated to the Main Committees and the Plenary of the General Assembly, the General Committee should ensure the best use of the expertise of the Committees.

"7. When the General Assembly considers whether it needs to establish subsidiary organs, in accordance with Article 22 of the Charter, it should give careful consideration as to whether the subject-matter in question could be dealt with by existing organs, including its Main Committees and their working groups. Subsidiary organs should seek constantly to improve their procedures and methods of work in order to ensure effective consideration of questions allocated to them by the General Assembly.

"8. The dates and length of the sessions of bodies of the General Assembly that meet intersessionally should be determined as soon as possible by the General Assembly, as appropriate, following advice from the Committee on Conferences, on the proposal of the Secretary-General. The General Assembly should take account of the past experience, the state of current work in regard to the mandate given to the body in question and the need to avoid as far as possible overlapping meetings of bodies which deal with subject-matter of a similar nature.

"9. Informal consultations about the work of bodies of the General Assembly that meet intersessionally should continue to be held in advance of the sessions of such bodies in order to facilitate the conduct of their sessions, especially as regards the composition of the bureau and the organization of work.

"10. Resolutions should request observations from States or reports by the Secretary-General in so far as they are likely to facilitate the implementation of the resolutions or the continued examination of the question."

Notes

1/ For the list of members of the Committee at its 1990 session see A/AC.182/INF/15.

2/ Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 33 (A/36/33), para. 7.

3/ A/AC.182/L.64.

4/ Official Records of the General Assembly, Forty-fourth Session, Supplement No. 33 (A/44/33), para. 101.

5/ Ibid., Supplement No. 1 (A/44/1).

6/ Official Records of the General Assembly, Fortieth Session, Supplement No. 33 (A/40/33), para. 223.

7/ Ibid., Forty-first Session, Supplement No. 33 (A/41/33), para. 32; ibid., Forty-second Session, Supplement No. 33 (A/42/33), paras. 20 and 34; and ibid., Forty-fourth Session, Supplement No. 33 (A/44/33), paras. 84 and 99.

8/ Ibid., para. 101.

9/ Ibid., Forty-third Session, Supplement No. 33 (A/43/33).

كيفية الحصول على منشورات الأمم المتحدة

يمكن الحصول على منشورات الأمم المتحدة من المكتبات ودور التوزيع في جميع أنحاء العالم . استعلم عنها من المكتبة التي تتعامل معها أو اكتب إلى : الأمم المتحدة ، قسم البيع في نيويورك أو في جنيف .

如何购取联合国出版物

联合国出版物在全世界各地的书店和经售处均有发售。请向书店询问或写信到纽约或日内瓦的联合国销售组。

HOW TO OBTAIN UNITED NATIONS PUBLICATIONS

United Nations publications may be obtained from bookstores and distributors throughout the world. Consult your bookstore or write to: United Nations, Sales Section, New York or Geneva.

COMMENT SE PROCURER LES PUBLICATIONS DES NATIONS UNIES

Les publications des Nations Unies sont en vente dans les librairies et les agences dépositaires du monde entier. Informez-vous auprès de votre libraire ou adressez-vous à : Nations Unies, Section des ventes, New York ou Genève.

КАК ПОЛУЧИТЬ ИЗДАНИЯ ОРГАНИЗАЦИИ ОБЪЕДИНЕННЫХ НАЦИЙ

Издания Организации Объединенных Наций можно купить в книжных магазинах и агентствах во всех районах мира. Наводите справки об изданиях в вашем книжном магазине или пишите по адресу: Организация Объединенных Наций, Секция по продаже изданий, Нью-Йорк или Женева.

COMO CONSEGUIR PUBLICACIONES DE LAS NACIONES UNIDAS

Las publicaciones de las Naciones Unidas están en venta en librerías y casas distribuidoras en todas partes del mundo. Consulte a su librero o diríjase a: Naciones Unidas, Sección de Ventas, Nueva York o Ginebra.

Litho in United Nations, New York

00600
ISSN 0255—1276

06014—March 1990—3,500